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## BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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COMMISSIONER

JAN 16 1998

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IN THE MATTER OF THE COMPETITION IN  
THE PROVISION OF ELECTRIC SERVICES  
THROUGHOUT THE STATE OF ARIZONA.

DOCKET NO. U-0000-94-165

**FOURTH AMENDED  
PROCEDURAL ORDER****BY THE COMMISSION:**

The Arizona Corporation Commission ("Commission") issued Decision No. 59943, dated December 26, 1996, which approved new rules A.A.C. R14-2-1601 through R14-2-1616 ("Rules" or "Electric Competition Rules"). On August 29, 1997, the Commission issued Decision No. 60351, in which the Hearing Division was directed "to produce procedural orders in order to establish hearings, evidentiary or otherwise, regarding any aspect of electric competition that is necessary and appropriate."

Our December 1, 1997 Procedural Order set an evidentiary hearing commencing on February 9, 1998 on issues related to stranded costs. Subsequently, our December 1, 1997 Procedural Order was modified by our Procedural Orders dated December 11, 1997, December 15, 1997 and January 5, 1998.

On December 19, 1997, Salt River Project ("SRP") filed its Objection to Procedural Orders and Request for a New Procedural Order ("Objection"). On January 5, 1998, Staff of the Commission filed its Response in Opposition to SRP's Objection. On January 7, 1998, Arizona Public Service Company ("APS") filed its Response to SRP's Objection. On January 9, 1998, ASARCO, Inc., Cyprus Climax Metals Corporation, and ENRON Corporation (collectively referred to as "Consumers") filed their Response to the Objection. On January 15, 1998, the Residential Utility Consumer Office ("RUCO") filed its Response to the Objection.

SRP requested the Procedural Orders be amended to restructure this docket as a legislative proceeding. SRP indicated it has a strong interest in participating in a rule making process, but did not want to participate in any quasi-judicial proceeding before the Commission. According to SRP, an adjudicatory format imposes a chilling effect on broad participation. SRP indicated that a legislative process would be better since there would be no restrictions on participation, no pre-filed sworn

1 testimony, no discovery and no cross examination. SRP alleged that the Procedural Orders in this matter  
2 have created a proceeding which is inconsistent with the Administrative Procedures Act ("APA").  
3 Lastly, SRP asserted that until the Procedural Orders are modified to reflect the procedures requested,  
4 SRP will not be a participant to the proceeding.

5 Staff concurred that it was SRP's choice whether to participate in this matter. Staff opined that  
6 the proceeding has been structured to encourage participation either by filing of testimony/cross-  
7 examination or by providing public comment. Staff also did not dispute SRP's assertion that facts  
8 specific to the amount of stranded costs etc. for individual utilities should be part of a separate proceeding  
9 as contemplated by A.A.C. R14-2-1607(I). However, Staff indicated this proceeding has been  
10 established to consider "generic issues" and the procedures established are not inconsistent with the APA.

11 APS concurred with Staff's comments. According to APS, the request of SRP would eliminate  
12 fundamental due process hearing requirements. APS was also critical of SRP's fear of disclosing  
13 information regarding SRP that should be available to the public. As to the "chilling effect on broad  
14 public participation," APS pointed to the lengthy service list to dispute that assertion. Lastly, APS  
15 opined that SRP has never objected on the previous occasions in which evidentiary hearings have been  
16 requested in this matter. Furthermore, SRP consented at the December 9, 1997 pre-hearing conference  
17 to the procedural elements set forth.<sup>1</sup>

18 The Consumers concurred with SRP's Objection. Generally, the Consumers indicated that the  
19 procedures currently set out are not necessary for the Commission to complete its legislative act of  
20 implementing competition in Arizona. According to the Consumers:

21 "No cross-examination of witnesses is necessary nor should it be permitted. Cross-  
22 examination of witnesses is a key procedural difference between contested matters and  
23 legislative hearings. The allowance of cross-examination calls into question the veracity  
24 of witnesses, puts witnesses on the defensive and inhibits the flow of information and  
25 dialogue, as well as turning the process into an adversarial rather than cooperative one.  
26 Further, with the substantial number of parties who have now intervened in this matter,  
27 the allowance of cross-examination of witnesses will take an inordinate amount of  
28 valuable time and consume limited resources which would be better spent by the parties  
preparing and gearing up for the implementation of competition."

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<sup>1</sup> We note that APS also consented to those elements but included a statement in footnote  
2 to their Objections regarding the limits on cross-examination and the amorphous scope of the  
proceedings.

1 RUCO objected to the request of the Consumers to remove the right to cross-examine witnesses.  
2 RUCO asserted that because of the far-reaching implications of this proceeding and the necessary factual  
3 basis, cross-examination must be allowed. While RUCO agreed it was SRP's choice whether to  
4 participate in these proceedings, RUCO opined that it would not be in the public interest to allow SRP  
5 to choose the manner in which the proceedings are conducted.<sup>2</sup>

6 Because of the significance of electric restructuring, we believe it appropriate to have the  
7 necessary facts to make an informed decision. Further, we believe pre-filing of testimony which will be  
8 subject to cross-examination will permit the best ideas to come forward. We do not believe this limits  
9 parties' participation but will cause them to carefully analyze their positions knowing they are going to  
10 have to defend them under oath.

11 Based on all the above, SRP's Objection is denied. Further, if SRP chooses to remain a party and  
12 provide positive contributions to this proceeding it will have to follow the same procedural guidelines  
13 as the other parties.

14 We note that we have also received numerous phone calls requesting clarification/complaints  
15 about the large number of names on the service list and the corresponding work/bill to provide copies to  
16 all those on the service list. As a result, we will give the following additional guidance regarding that  
17 list:

- 18 1) A copy of any document filed with this Commission should be sent to each of the  
19 Affected Utilities and those designated by Procedural Order as a party to this docket:
- 20 2) For those Affected Utilities and parties who have more than one representative on the  
21 service list, we will require copies of documents to be sent to only one of those  
22 representatives; and
- 23 3) For those who have more than one representative on the service list, they should let the  
24 other parties know which person/entity should be served with copies or make their own  
25 arrangements with other parties to receive additional copies.

26 On January 9, 1998, the Arizona School Boards Association ("School Boards") filed an  
27 Application to Intervene ("Application") in this matter. In its Application, the School Boards indicated  
28 it would not burden the proceeding or broaden the issues therein. Further, the School Boards would be

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<sup>2</sup> While RUCO responded to other motions to amend Procedural Orders, those motions will be addressed in a subsequent Procedural Order.

sharing counsel and witnesses with intervenor Pacific Gas and Electric Energy Services, Inc.

Although the Application of the School Boards was filed late, we do not find any harm to other parties if we approve that Application. Accordingly, we will do so with the understanding that the School Boards must comply with all other procedural dates.

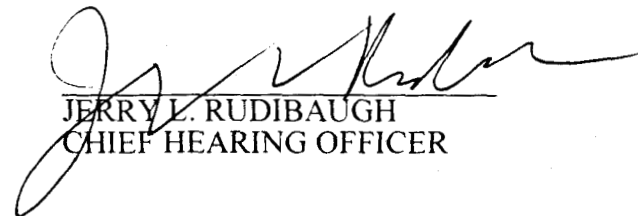
IT IS THEREFORE ORDERED that Salt River Project's Request for a New Procedural Order is hereby denied.

IT IS FURTHER ORDERED that the Application to Intervene of the Arizona School Boards Association is hereby granted.

IT IS FURTHER ORDERED that only one copy of documents filed with the Commission needs to be served on each Affected Utility and other parties to this proceeding.

IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at the hearing.

DATED this 16<sup>th</sup> day of January, 1998

  
JERRY L. RUDIBAUGH  
CHIEF HEARING OFFICER

Copies of the foregoing mailed/delivered this 16<sup>th</sup> day of January, 1998 to:

Barbara Klemstine  
ARIZONA PUBLIC SERVICE CO.  
Station 9909  
P.O. Box 53999  
Phoenix, Arizona 85072-3999

Greg Patterson  
RUCO  
2828 N Central Ave, Suite 1200  
Phoenix, Arizona 85004

Michael A. Curtis  
MARTINEZ & CURTIS, P.C.  
2712 North 7th Street  
Phoenix, Arizona 85006  
Attorneys for Arizona Municipal Power Users' Association

Walter W. Meek, President  
ARIZONA UTILITY INVESTORS ASSOCIATION  
2100 N. Central Avenue, Suite 210  
Phoenix, Arizona 85004

Rick Gilliam  
LAND AND WATER FUND OF THE ROCKIES  
2260 Baseline Road, Suite 200  
Boulder, Colorado 80302

Charles R. Huggins  
ARIZONA STATE AFL-CIO  
110 North 5th Avenue  
P.O. Box 13488  
Phoenix, Arizona 85002

David C. Kennedy  
LAW OFFICES OF DAVID C. KENNEDY  
100 West Clarendon Avenue, Suite 200  
Phoenix, Arizona 85012-3525

Norman J. Furuta  
DEPARTMENT OF THE NAVY  
900 Commodore Drive, Building 107  
P.O. Box 272 (Attn. Code 90C)  
San Bruno, California 94066-0720

Thomas C. Horne  
Michael S. Dulberg  
HORNE, KAPLAN & BISTROW, P.C.  
40 North Central Avenue, Suite 2800  
Phoenix, Arizona 85004

Barbara S. Bush  
COALITION FOR RESPONSIBLE ENERGY EDUCATION  
315 West Riviera Drive  
Tempe, Arizona 85252

Rick Lavis  
ARIZONA COTTON GROWERS ASSOCIATION  
4139 East Broadway Road  
Phoenix, Arizona 85040

Steve Brittle  
DON'T WASTE ARIZONA, INC.  
6205 South 12th Street  
Phoenix, Arizona 85040

Karen Glennon  
19037 N. 44th Avenue  
Glendale, Arizona 85308

COLUMBUS ELECTRIC COOPERATIVE, INC.  
P.O. Box 631  
Deming, New Mexico 88031

CONTINENTAL DIVIDE ELECTRIC COOPERATIVE  
P.O. Box 1087  
Grants, New Mexico 87020

DIXIE ESCALANTE RURAL ELECTRIC ASSOCIATION  
CR Box 95  
Beryl, Utah 84714

GARKANE POWER ASSOCIATION, INC.  
P.O. Box 790  
Richfield, Utah 84701

Stephen Ahearn  
ARIZONA DEPT OF COMMERCE  
ENERGY OFFICE  
3800 North Central Avenue, 12th Floor  
Phoenix, Arizona 85012

Betty Pruitt  
ARIZONA COMMUNITY ACTION ASSOC.  
202 E. McDowell, #255  
Phoenix, Arizona 85004

Bradley Carroll  
TUCSON ELECTRIC POWER CO.  
P.O. Box 711  
Tucson, Arizona 85702

Mick McElrath  
CYPRUS CLIMAX METALS CO.  
P.O. Box 22015  
Tempe, Arizona 85285-2015

A.B. Baardson  
NORDIC POWER  
4281 N. Summerset  
Tucson, Arizona 85715

Michael Rowley  
c/o CALPINE POWER SERVICES  
50 West San Fernando, Suite 550  
San Jose, California 95113

Dan Neidlinger  
3020 N. 17th Drive  
Phoenix, Arizona 85015

Jessica Youle  
PAB300  
SALT RIVER PROJECT  
P.O. Box 52025  
Phoenix, Arizona 85072-2025

Clifford Cauthen  
GRAHAM COUNTY ELECTRIC CO-OP  
P.O. Drawer B  
Pima, Arizona 85543

Joe Eichelberger  
MAGMA COPPER COMPANY  
P.O. Box 37  
Superior, Arizona 85273

Craig Marks  
CITIZENS UTILITIES COMPANY  
2901 N. Central Avenue, Suite 1660  
Phoenix, Arizona 85012

1 Jack Shilling  
2 DUNCAN VALLEY ELECTRIC COOPERATIVE  
3 P.O. Box 440  
4 Duncan, Arizona 85534

5 Nancy Russell  
6 ARIZONA ASSOCIATION OF INDUSTRIES  
7 2025 N. 3rd Street, Suite 175  
8 Phoenix, Arizona 85004

9 Barry Huddleston  
10 DESTEC ENERGY  
11 P.O. Box 4411  
12 Houston, Texas 77210-4411

13 Steve Montgomery  
14 JOHNSON CONTROLS  
15 2032 West 4th Street  
16 Tempe, Arizona 85281

17 ARIZONA RETAILERS ASSOCIATION  
18 Michelle Ahlmer  
19 137 East University Drive  
20 Mesa, Arizona 85201-5995

21 Ken Saline  
22 Jeff Woner  
23 K.R. SALINE & ASSOCIATES  
24 160 N. Pasadena  
25 Suite 101  
26 Mesa, AZ 85201-6764

27 Louis A. Stahl  
28 STREICH LANG  
2 North Central Avenue  
Phoenix, Arizona 85004

Douglas Mitchell  
SAN DIEGO GAS AND ELECTRIC CO.  
P.O. Box 1831  
San Diego, California 92112

Sheryl Johnson  
TEXAS-NEW MEXICO POWER CO.  
4100 International Plaza  
Fort Worth, Texas 76109

Ellen Corkhill  
AARP  
5606 North 17th Street  
Phoenix, Arizona 85016

Andrew Gregorich  
BHP COPPER  
P.O. Box M  
San Manuel, Arizona

Larry McGraw  
USDA-RUS  
6266 Weeping Willow  
Rio Rancho, New Mexico 87124

Jim Driscoll  
ARIZONA CITIZEN ACTION  
2430 S. Mill, Suite 237  
Tempe, Arizona 85282

William Baker  
ELECTRICAL DISTRICT NO. 6  
P.O. Box 16450  
Phoenix, Arizona 85011

John Jay List  
General Counsel  
NATIONAL RURAL UTILITIES  
COOPERATIVE FINANCE CORP.  
2201 Cooperative Way  
Herndon, Virginia 21071

Wallace Tillman  
Chief Counsel  
NATIONAL RURAL ELECTRIC  
COOPERATIVE ASSOCIATION  
4301 Wilson Blvd.  
Arlington, Virginia 22203-1860

Robert Julian  
PPG  
1500 Merrell Lane  
Belgrade, Montana 59714

C. Webb Crockett  
FENNEMORE CRAIG  
3003 N. Central Avenue, Suite 2600  
Phoenix, Arizona 85012-2913  
Attorneys for Asarco, Inc., Cyprus Climax Metals Co.,  
Enron, Inc. and AAEC

Department of Navy  
Naval Facilities Engineering Command  
Navy Rate Intervention  
901 M Street SE, Building 212  
Washington, DC 20374  
Attn: Sam DeFrawi

Robert S. Lynch  
340 E. Palm Lane, Suite 140  
Phoenix, Arizona 85004-4529

Douglas A. Oglesby  
Vantus Energy Corporation  
353 Sacramento Street, Suite 1900  
San Francisco, California 94111

Michael Block  
Goldwater Institute  
Bank One Center  
201 North Central  
Concourse Level  
Phoenix, Arizona 85004

Stan Barnes  
Copper State Consulting Group  
100 W Washington Street, Suite 1415  
Phoenix, Arizona 85003

Carl Robert Aron  
Executive Vice President and COO  
Itron, Inc.  
2818 N. Sullivan Road  
Spokane, Washington 99216

Douglas Nelson  
DOUGLAS C NELSON PC  
7000 N. 16th Street, Suite 120-307  
Phoenix, Arizona 85020

Lawrence V. Robertson Jr.  
MUNGER CHADWICK PLC  
333 North Wilmet, Suite 300  
Tucson, Arizona 85711-2634  
Attorney for PGE Energy

Tom Broderick  
6900 East Camelback Rd. # 700  
Scottsdale, Arizona 85251

Albert Sterman  
ARIZONA CONSUMERS COUNCIL  
2849 East 8th Street  
Tucson, Arizona 85716

Michael Grant  
GALLAGHER & KENNEDY  
2600 N. Central Avenue  
Phoenix, Arizona 85004  
Attorneys for AEP CO.

Suzanne Dallimore  
Antitrust Unit Chief  
Department of Law Building  
Attorney General's Office  
1275 West Washington Street  
Phoenix, Arizona 85007

Lex Smith  
Michael Patten  
BROWN & BAIN PC  
2901 N. Central Avenue  
Phoenix, Arizona 85001-0400  
Attorneys for Morenci Water & Electric,  
Ajo Improvement & Phelps Dodge Corp.

Vinnie Hunt  
CITY OF TUCSON  
Department of Operations  
4004 S. Park Avenue, Building #2  
Tucson, Arizona 85714

Steve Wheeler  
Thomas M. Mumaw  
SNELL & WILMER  
One Arizona Center  
400 E. Van Buren Street  
Phoenix, Arizona 85004-0001  
Attorneys for APS

William Sullivan  
MARTINEZ & CURTIS, P.C.  
2716 N. 7th Street.  
Phoenix, Arizona 85006  
Attorneys for Mohave Electric Cooperative and  
Navopache Electric Cooperative

Elizabeth S. Firkins  
INTERNATION BROTHERHOOD OF  
ELECTRICAL WORKERS, L.U. #1116  
750 S. Tucson Blvd.  
Tucson, Arizona 85716-5698

Carl Dabelstein  
2211 E. Edna Avenue  
Phoenix, Arizona 85022

Larry K. Udall  
Arizona Municipal Power Users' Assoc.  
2712 N. 7th Street  
Phoenix, Arizona 85006-1090

1 Roderick G. McDougall  
City Attorney  
2 Attn: Jesse Sears, Assistant Chief Counsel  
200 W Washington Street, Suite 1300  
3 Phoenix, Arizona 85003-1611

4 William J. Murphy  
200 W Washington Street, Suite 1400  
5 Phoenix, Arizona 85003-1611

6 Russell E. Jones  
33 N. Stone Ave., Suite 2100  
7 P.O. Box 2268  
Tucson, Arizona 85702  
8 Attorneys for Trico Electric Cooperative, Inc.

9 Christopher Hitchcock  
P.O. Box 87  
10 Bisbee, Arizona 85603-0087  
Attorneys for Sulphur Springs Valley  
11 Electric Cooperative, Inc.

12 Myron L. Scott  
1628 E. Southern Avenue, No. 9-328  
13 Tempe, AZ 85282-2179  
Attorneys for Arizona for a Better Environment

14 Andrew Bettwy  
15 Debra Jacobson  
SOUTHWEST GAS CORPORATION  
16 5241 Spring Mountain Road  
Las Vegas, Nevada 89102

17 Barbara R. Goldberg  
18 OFFICE OF THE CITY ATTORNEY  
3939 Civic Center Blvd.  
19 Scottsdale, Arizona 85251

20 Terry Ross  
Center for Energy & Economic Development  
21 P.O. Box 288  
Franktown, Colorado 80116

22 Peter Glaser  
23 DOHERTY RUMBLE & BUTLER PA  
1401 New York Ave., N.W., Suite 1100  
24 Washington, DC 20005

25 Phyllis Rowe  
ARIZONA CONSUMERS COUNCIL  
26 P.O. Box 1288  
Phoenix, Arizona 85001

27  
28

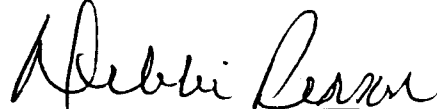
Thomas Pickrell  
Arizona School Board Association  
2100 N. Central Avenue  
Phoenix, Arizona 85004

Paul Bullis, Chief Counsel  
Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

Director Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

Barry, Hetzer, Stickley & Schutzman  
Court Reporters  
2627 N. Third St., Suite 3  
Phoenix, Arizona 85004-1103

By:

  
Debbi Person  
Secretary to Jerry L. Rudibaugh